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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
10

11 ELIZABETH WEISS,

12 Plaintiff,

13 vs.

14 STEPHEN PEREZ, in his capacity as
President of San Jose University; et al.,

15 Defendant.
16

Case No. 5:22-cv-00641-BLF

~~[PROPOSED]~~ ORDER COMPELLING
PRODUCTION OF INFORMATION
SUBJECT TO THE FAMILY
EDUCATIONAL RIGHTS AND PRIVACY
ACT (FERPA), 20 U.S.C. § 1232g

Judge: Hon. Beth Labson Freeman

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18 Defendants Stephen Perez, Interim President of San Jose State University (“SJSU”),
19 Vincent J. Del Casino, SJSU Provost, Walt Jacobs, former SJSU College of Social Sciences Dean,
20 Roberto Gonzalez, SJSU Department of Anthropology Chair, Charlotte Sunseri, SJSU NAGPRA
21 Coordinator, and Alisha Marie Ragland, SJSU Tribal Liaison (“Defendants”), maintain that the
22 Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, applies to certain
23 documents responsive to the discovery requests that Plaintiff Elizabeth Weiss (“Plaintiff”) has
24 served on Defendants.

25 FERPA prohibits the disclosure of “education records” and “personally identifiable
26 information” contained therein, except in limited circumstances set forth in the statute.

27 Subsection (b)(2)(B) of FERPA provides that otherwise protected information may be
28 produced in compliance with judicial order, upon condition that any affected student is notified of

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1 the judicial order in advance of compliance therewith by the educational agency. 20 U.S.C. §
2 1232g(b)(2)(B).

3 The Court takes no position in this Order on whether FERPA applies to each of the
4 individual documents in question. The parties apply for an entry of an order compelling
5 production, subject to a protective order, of unredacted versions of otherwise discoverable
6 documents that Defendants would redact or withhold based on their position that FERPA applies.
7 Based on the parties' application, and in the interests of party and judicial economy and efficiency,
8 the Court hereby orders the following:


9 1. Upon approval of a protective order satisfactory to the Court, Defendants shall,
10 prior to production of unredacted documents responsive to Plaintiff's discovery requests that
11 Defendants would otherwise withhold or redact based on FERPA, provide notice of this Order to
12 the affected students.

13 2. Upon notice to the affected students, Defendants shall proceed diligently to mark
14 any non-privileged documents responsive to Plaintiff's First Set of Requests for Production that
15 they would otherwise withhold or redact based on FERPA as "CONFIDENTIAL," subject to the
16 protective order as entered, and produce them to Plaintiff within a reasonable time thereafter.

17 3. If Defendants are unable to provide notice of this Order to an affected student
18 within a reasonable time of learning of the existence of discoverable information that they would,
19 in the absence of this Order, withhold or redact based on FERPA, Defendants shall proceed with
20 producing the information to Plaintiff as set forth herein, unredacted except for those redactions
21 related to the student who could not be notified.

22 4. On a going forward basis, Defendants shall diligently provide notice of this Order
23 to any additional affected students as they are identified, even if it believes that, in the absence of
24 this Order, that information would be protected from disclosure by FERPA. Defendants shall then
25 produce non-privileged, responsive documents to Plaintiff as set forth herein.

26
27 DATED: September 30, 2022


~~Honorable Beth Labson Freeman~~
Honorable Susan van Keulen